STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 11,822
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her eligibility for ANFC based on a finding that her children are not deprived of parental support and care.

FINDINGS OF FACT

1. The petitioner is the mother of five children, two from a prior marriage which ended in divorce several years ago, and three from her current marriage. The petitioner was granted custody of the two children from her first marriage who have always lived with her.

2. On January 22, 1993, the petitioner applied for ANFC for her two older children only, claiming that her current husband, who is employed, does not make enough money and is not legally obliged to support the children of her prior marriage. Her former husband is not providing child support for his two children.

3. On February 12, 1993, the petitioner's application for ANFC was denied because each of her children has two parents in the home.

4. The petitioner believes based on assertions made by her ex-husband in court documents that he receives ANFC benefits as an incapacitated father for himself and three children born of a subsequent marriage who reside with him. His obligations for support for the petitioner's two children have been suspended because of his current financial condition. The Department, because of confidentiality requirements, refused to verify her ex-husband's current receipt of ANFC.

ORDER

The Department's decision is affirmed.

REASONS

The Department's regulations require that children to be assisted under the ANFC program be deprived of parental support or care:

> Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:
>
> 1. Death of a parent;
>
> 2. Continued absence of a parent;
>
> 3. Physical or mental incapacity of a parent;
>
> 4. Unemployment - (ANFC-UP).
>
> Under Vermont Law (V.S.A. 15 Section 201, Section 291 as amended by the 1971 Session, and Section 295 as added by the 1972 Adjourned Session of the Vermont General Assembly) stepparents have liability equal to natural

> parents for support of stepchildren under the age of eighteen.
>
> However, if the absent parent is a stepparent to the child(ren) in the assistance group and is divorced, legally separated, or living apart from the applicant/recipient spouse, support from the stepparent is not pursued because absence terminated his or her financial obligation to the children.
>
> Where an applicant for or a recipient of assistance is married to a person other than the father of the children for whose benefit she makes application or receives assistance, determination of initial or continued eligibility shall be made on the same basis as if the stepfather were the natural father.
>
> Paternity must be documented prior to granting assistance to a natural father who is not married to the child's mother. A court order, or a written acknowledgment of paternity signed by him and signed by the mother (if possible) is necessary for documentation of paternity.
>
> W.A.M. ə 2330

The above regulation requires the Department to consider a child's stepparent equal to a parent for determining whether the child is deprived of parental support or care. Under this regulation, a child who lives in a household with her parent and stepparent is not deprived of parental support or care unless the principal wage earner is unemployed. As all of the petitioner's children live with either both parents or a parent and a stepparent, none of the children in this family can be found to be deprived of parental support unless the principal wage earner becomes unemployed. The Department's decision is, therefore, correct unless the regulation itself is invalid, as the petitioner argues.

The petitioner bases her argument of invalidity on a

perceived conflict between the Department's regulation and state law which establishes the liability of stepparents:

> A stepparent has a duty to support a stepchild if they reside in the same household and if the financial resources of the natural or adoptive parents are insufficient to provide the child with a reasonable subsistence consistent with decency and health. The duty of a stepparent to support a stepchild under this section shall be coextensive with and enforceable according to the same terms as the duty of a natural or adoptive parent to support a natural or adoptive child including any such duty of support as exists under the common law of this state, for so long as the marital bond creating the step relationship shall continue.
>
> 15 V.S.A. э 296

The petitioner argues that this statute restricts her current husband's liability with regard to her children to a duty to support only if her ex-husband cannot provide any support. If the petitioner's belief that her husband is incapacitated and on ANFC is true, her interpretation of the above statute would not advance her argument since her ex-husband's resources would not be sufficient to support her children and her new husband would become liable for their support. However, the Supreme Court has rejected the petitioner's interpretation and has held that the above statute, because of the use of the word "coextensive", has created a "general obligation of support" which does not limit a stepparent's obligation to "situations where the financial resources of the natural parents are inadequate to provide the child with a reasonable subsistence." Ainsworth v. Ainsworth, 154 Vt. 103, 112 (1990).

The state law, then, requires a stepparent to support a child equally with a natural parent. The Department's regulation cited above which equates parents and stepparents for purposes of determining deprivation of parental support or care cannot be found to conflict with the state statute.

The petitioner argues in the alternative that, if the Department is providing ANFC benefits for her ex-husband and the children who live with him, they should also provide support for his other children who live with her. She asks that the children of her ex-husband who are residing in her household be placed on her ex-husband's ANFC grant. Even assuming that the petitioner's ex-husband receives an ANFC grant, the Department's regulations would not allow for such a payment. The ANFC regulations only allow for payment for children residing with their parent or other caretaker relative. W.A.M. ээ 2242, 2242.1, 2242.2. The regulations state with some specificity:

> . . .
>
> The child(ren) and relative normally share the same household. A "home" shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.
>
> W.A.M. э 2302.12

The facts clearly show that the petitioner's two oldest children do not customarily share her ex-husband's home. Nor are they temporarily away from the ex-husband's home as they

have been in the custody of and lived in the home of the petitioner for several years. It is only children for whom the ex-husband has responsibility with regard to their care and control and with whom he customarily lives who could be eligible for ANFC on his grant (assuming he gets one). See Fair Hearing Nos. 11,243 and 11,182. Therefore, under the regulations, the petitioner's two oldest children cannot be placed on their father's grant unless and until they go to live with him on more than a temporary basis.

As the Department's decision is in accord with its regulations and, as those regulations do not conflict with state law, the Board is bound to affirm the Department's decision. 3 V.S.A. ə 3091(d).

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